

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JACOB BENJAMIN JACKSON
and SAMANTHA MARIN JACKSON, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
September 21, 2006

Petitioner-Appellee,

v

TRACI BETH JACKSON,

Respondent-Appellant,

and

PAUL D. JACKSON,

Respondent.

No. 267963
Oakland Circuit Court
Family Division
LC No. 04-693264-NA

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the order terminating her parental rights to her two minor children pursuant to MCL 712A.19b(3)(h). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent-appellant was convicted of the attempted murder of the children's father and sentenced to incarceration for 9 to 25 years. The court order terminating her parental rights noted that this sentence meant that upon their mother's earliest possible release, Jacob would be seventeen years old and Samantha fourteen. The court also stated:

Respondent-Mother has taken no responsibility for her actions and shows no remorse for what she has done. By her selfish and extremely irresponsible actions, she has devastated the lives of countless people, most importantly her two young children. . . . [T]his Court cannot ignore the psychological and emotional damage that has been done to these children as a result of Respondent-Mother's actions. Based on testimony given during both phases of this proceeding, it is clear to this Court that Jacob and Samantha need closure and need to move on with their lives."

The trial court terminated respondent-appellant's parental rights under MCL 712A.19b(3)(g), (h), and (j). Respondent-appellant argues on appeal that the trial court erred in finding the statutory grounds of MCL 712A.19b(3)(h) were met, and erred in finding termination was in the children's best interests.

We disagree. "We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Trejo*, 462 Mich 341, 357; 612 NW2d 407 (2000); MCR 3.977(J).

MCL 712A.19b(3)(h) provides that the court may terminate parental rights if the court finds by clear and convincing evidence that:

The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

Here, respondent-appellant's sentence of incarceration for 9 to 25 years clearly falls within those parameters. The trial court did not err by finding that the statutory ground for termination was established by clear and convincing evidence.

Respondent-appellant argues that despite her incarceration, the children will not be deprived of a normal home for a period exceeding two years because they are in the care of their father. However, this Court in *In re SD*, 236 Mich App 240, 247; 599 NW2d 772 (1999), read subsection (h) to refer exclusively to the ability of the incarcerated parent to provide a normal home within two years, and we agree.

We further find that the trial court did not clearly err in its findings as to the best interests of the children. MCL 712A.19b(5). Respondent-appellant cites her constitutional right to parent her children, *Stanley v Illinois*, 405 US 645, 651; 92 S Ct 1208; 31 L Ed 2d 551 (1972). However, once a statutory ground for termination has been established by clear and convincing evidence, the parent's interest in the care and custody of the child gives way to the state's interest in protecting the child, this due process right is no longer implicated. *Trejo, supra* at 355-356.

The trial court considered respondent-appellant's attempt to kill the children's father, respondent-appellant's abrupt departure from the children's lives when she was incarcerated for that crime, and the psychological impact on the children of these events, the teasing that ensued at school, the trauma to the children of ongoing telephone contact with respondent-appellant, and the need for the children to move past this unpleasant part of their lives. The trial court concluded termination of respondent-appellant's parental rights was in the children's best interests, and we agree.

Once the statutory ground for termination was established, the burden was on respondent-appellant to come forward with some evidence that termination was clearly not in the children's

best interests. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). Respondent-appellant failed to make any such showing.

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Jessica R. Cooper